6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2020-0325; FRL-10118-01-R3]

Air Plan Approval; Maryland; Clean Data Determination and Approval of Select Attainment Plan Elements for the Anne Arundel County and Baltimore County, Maryland Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Anne Arundel County and Baltimore County, Maryland sulfur dioxide (SO_2) nonattainment area has attained the 2010 primary SO_2 national ambient air quality standard (2010 SO_2 NAAQS). In designated nonattainment areas where air quality data demonstrate that the NAAQS have been attained, EPA interprets certain requirements of the Clean Air Act (CAA) as no longer applicable for so long as air quality continues to meet the standard. Under this Clean Data Policy, EPA may issue a determination of attainment, known as a clean data determination (CDD), that a nonattainment area is attaining the relevant NAAQS. If finalized, this proposed CDD would suspend the obligation to submit certain attainment planning requirements for the nonattainment area for as long as the area continues to attain the 2010 SO_2 NAAQS.

EPA is also simultaneously proposing to approve certain elements of the attainment plan contained in Maryland's state implementation plan (SIP) revision for the Anne Arundel County and Baltimore County SO_2 nonattainment area (referred to hereafter as the Anne Arundel-Baltimore County Area, or simply the Area), submitted to EPA on January 31, 2020. The requirement to submit the elements that EPA is proposing to approve would not be suspended under this proposed CDD, as set forth in EPA's Clean Data Policy, because EPA considers them

to be independent of attaining the NAAQS under the CAA. Finally, EPA is approving as SIP strengthening measures certain emission limit requirements on large SO_2 emission sources that were submitted as part of Maryland's attainment plan for the nonattainment area. This determination of attainment and approval of certain elements and emissions limitations into the SIP does not redesignate the Area to attainment or constitute a full approval of the submitted attainment plan or of a maintenance plan. This action is being taken under the CAA.

DATES: Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2020-0325 at www.regulations.gov, or via email to gordon.mike@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **For Further Information Contact** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

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SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we refer to EPA.

I. Background

On June 22, 2010, EPA published in the **Federal Register** a strengthened, primary 1-hour SO_2 NAAQS, establishing a new standard at a level of 75 parts per billion (ppb), based on the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations of SO_2.[1] Following promulgation of a new or revised NAAQS, EPA is required to designate all areas of the country area as either "attainment," "nonattainment," or "unclassifiable." CAA section 107(d)(1). On July 12, 2016, EPA published a final rule designating the Anne Arundel-Baltimore County Area as nonattainment for the 2010 SO_2 NAAQS, based on air quality modeling and ambient air monitoring data. 81 FR 45039.

The major SO_2-emitting facilities in this Area at that time were three electrical generating units (EGUs) — Herbert A. Wagner (Wagner), with two coal-fired units, one #6 fuel oil-fired unit and one dual fuel (natural gas and fuel oil) unit; the Brandon Shores Generating Station (Brandon Shores), with two coal-fired units; and the Charles P. Crane Generating Station (Crane), with its two coal-fired units. The other major SO_2 source in the Area is the Wheelabrator Baltimore waste-to-energy incinerator. The nonattainment area is comprised of portions of Anne Arundel and Baltimore Counties that are within 26.8 kilometers of Wagner's Unit 3 stack, which is located at 39.17765 North latitude, 76.52752 West longitude.[2]

The CAA directs states containing an area designated nonattainment for the 2010 SO_2 NAAQS to develop and submit a nonattainment area (NAA) SIP to EPA within 18 months of the effective date of an area's designation as nonattainment. The NAA SIP (also referred to as an

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[1] On June 2, 2010, EPA signed the final rule titled, "Primary National Ambient Air Quality Standard for Sulfur Dioxide," 75 FR 35520 (June 22, 2010), codified at 40 CFR part 50.

[2] *See* the area's complete boundary description at 40 CFR 81.321. Note that the nonattainment area excludes any portion of Baltimore City that falls within the 26.8-kilometer radius of Herbert A. Wagner Generating Station's Unit 3 stack.

attainment plan) must meet the requirements of subparts 1 and 5 of part D, of Title 1 of the CAA, and provide for attainment of the NAAQS by the applicable statutory attainment date.[3] To be approved by the EPA under section 192(a), these NAA SIPs must provide for attainment of the NAAQS as expeditiously as practicable, but no later than five years from the effective date of designation. The Maryland Department of Environment (MDE) was required to prepare and submit to EPA a NAA SIP by March 12, 2018 to bring the Area into attainment by the attainment date of September 12, 2021. However, Maryland failed to submit a complete attainment plan for the Area by the March 12, 2018 deadline. On September 20, 2019, EPA issued a finding of failure to submit (FFS) regarding the required attainment plan SIP.[4]

The September 20, 2019 FFS resulted in the initiation of an 18-month clock toward imposition of sanctions upon the state under CAA section 179, unless by that date the state has submitted to EPA an SO_2 SIP and EPA has determined it to be complete and notified the state it has corrected the deficiency that gave rise to the FFS.[5] The FFS action also started a two-year clock by which EPA is required under CAA section 110(c) to promulgate a Federal Implementation Plan (FIP) for the area, unless the state submits, and EPA approves, a SIP for the area before that date. Maryland submitted an attainment plan SIP for the Anne Arundel-Baltimore County Area on January 31, 2020. On March 30, 2020, EPA determined Maryland's attainment plan SIP complete under the requirements for completeness under CAA section 110(k), terminating the sanctions clock started by the FFS action. If finalized, this CDD would have the effect of suspending EPA's obligation to promulgate a FIP for the outstanding attainment plan elements that are not being acted on in this document, for so long as the CDD remains in place. The requirement for outstanding attainment plan elements and the FIP clock will terminate if EPA redesignates the area to attainment.

Notwithstanding Maryland's submission of a complete attainment plan, EPA proposes to

[3] *See* sections 172 and 191-192 of the CAA.
[4] 84 FR 49462 (September 20, 2019).
[5] *See* 40 CFR 52.31(d)(5).

determine, based on evaluation of updated emissions data for the major SO_2 sources in the Area and on more recently available air quality monitoring and supporting air quality modeling data, that the Area is attaining the 2010 SO_2 NAAQS and qualifies for a CDD under EPA's Clean Data Policy.

II. EPA Clean Data Policy and Clean Data Determinations

Following enactment of the CAA Amendments of 1990, EPA discussed its interpretation of the requirements for implementing the NAAQS in the "General Preamble for the Implementation of title I of the CAA Amendments of 1990" (General Preamble).[6] In 1995, based on the interpretation of CAA sections 171, 172, and 182 in the General Preamble, EPA set forth what has become known as its "Clean Data Policy" for the 1-hour ozone NAAQS.[7] Under the Clean Data Policy, for a nonattainment area that can demonstrate attainment of the standard before implementing CAA nonattainment measures, EPA interprets the requirements of the CAA that are specifically designed to help an area achieve attainment, including attainment demonstrations, implementation of reasonably available control measures, including reasonably available control technology (RACM/RACT), reasonable further progress (RFP) demonstrations, emissions limitations and control measures as necessary to provide for attainment, and contingency measures, to be suspended for so long as air quality continues to meet the standard.[8] EPA's "2014 Guidance for 1-hour SO_2 Area SIP Submissions" (2014 SO_2 Nonattainment Area Guidance) provides guidance and EPA's rationale for the application of the existing Clean Data Policy to the 2010 1-hour primary SO_2 NAAQS.[9]

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[6] 57 FR 13498, 13564 (April 16, 1992).

[7] EPA's statutory interpretation of the Clean Data Policy is further described in the "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2 (referred to as the Phase 2 Final Rule)", (70 FR 71612, November 29, 2005). The Tenth, Seventh, and Ninth Circuit U.S. District Courts have upheld EPA rulemakings applying the Clean Data Policy. *See Sierra Club v. EPA*, 99 F. 3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, No. 04–73032 (9th Cir., June 28, 2005) memorandum opinion.

[8] *See* Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment areas Meeting the Ozone National Ambient Air Quality Standard," dated May 10, 1995.

[9] Memorandum from Steve Page, Director of the EPA's Office of Air Quality Planning and Standards, to the EPA Air Division Directors entitled, "Guidance for 1-hr SO_2 Nonattainment Area SIP Submissions," dated April 23, 2014.

EPA may issue a CDD under our Clean Data Policy when a nonattainment area is attaining the 2010 SO_2 NAAQS based on the most recent available data. EPA will determine whether the area has attained the 2010 SO_2 NAAQS based on available information, including air quality monitoring data and air quality dispersion modeling information for the affected area. If the determination of attainment is issued, then certain attainment plan requirements for the area are suspended for so long as the area continues to attain the NAAQS.

However, the suspension of the obligation to submit an attainment plan is only appropriate where the area remains in attainment of the NAAQS. EPA is proposing to require Maryland to submit annual statements to EPA (due by July 1 of each year after the final CDD), to address whether the Area has continued to attain the 2010 SO_2 NAAQS. EPA expects that these statements would include at least available air quality monitoring data, an assessment of changes in SO_2 emissions from existing or new sources, and discussion of whether these changes warrant updated modeling. If EPA does not receive credible information indicating that the area continues to attain the SO_2 NAAQS, EPA will propose to rescind the Anne Arundel-Baltimore County Area's CDD, the finalization of which would reinstate all outstanding attainment planning requirements that were suspended by the CDD. Therefore, if the area violates the NAAQS in the future and EPA rescinds the CDD, there would no longer be a basis for suspending EPA's FIP obligation, and EPA would have an immediate obligation to promulgate a FIP addressing the outstanding SIP requirements for the Anne Arundel-Baltimore County Area for the SO_2 NAAQS that were the subject of the September 20, 2019 FFS.

A determination of attainment under the Clean Data Policy does not serve to alter the Area's nonattainment designation. CDDs are not redesignations to attainment. For EPA to redesignate an area to attainment the state must submit, and EPA must approve, a redesignation request for the Area that meets the requirements of CAA section 107(d)(3).

III. EPA's Analysis Supporting a Clean Data Determination for the Anne Arundel-Baltimore County Area

EPA may make a CDD for an SO_2 nonattainment area if the most recent three years of air quality monitoring data from a monitor sited in the area of peak ambient SO_2 concentrations show attainment of the NAAQS and any other relevant information, such as dispersion modeling, show the area is meeting the NAAQS. Initial designations for the 2010 SO_2 NAAQS were based on EPA's technical assessment of, and conclusions regarding the weight of evidence for, each area, including but not limited to available air quality monitoring data (for the three most recent calendar years) and/or air quality modeling. In the case of the Anne Arundel-Baltimore County Area, the monitor recording SO_2 concentrations for the most recent 3-year period is not located in the area of peak ambient SO_2 concentrations. Because the monitor is not located in the area of peak expected SO_2 concentrations, both monitoring and modeling would need to show that the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations (which yields the "design value") would not violate the 2010 1-hour SO_2 NAAQS level of 75 parts per billion (ppb).

For a CDD where monitors are not located in the area of peak expected SO_2 concentrations, air quality dispersion modeling based upon the most recent three years of actual emissions or based on permitted allowable emissions should show attainment of the 2010 SO_2 NAAQS. In the Anne Arundel-Baltimore County Area, the nearest certified ambient monitors to the primary SO_2 sources are over 15 kilometers (km) from Brandon Shores and Wagner and approximately 9 km from Crane, and neither monitor is close to the expected area of SO_2 peak concentrations resulting from these sources. Similar to the original designation modeling, a more current characterization of emissions using a regulatory dispersion model provides the necessary estimation of source concentrations near the primary SO_2 sources identified in the Anne Arundel-Baltimore County Area.

A. EPA's Analysis of Recent SO_2 Monitoring for the Anne Arundel-Baltimore County Area

EPA's 2014 SO_2 Nonattainment Area Guidance states that ambient monitoring data in support of a CDD should comport with EPA's "SO_2 NAAQS Designations Source-Oriented

Monitoring Technical Assistance Document" (SO_2 Monitoring TAD).[10] The SO_2 Monitoring TAD was provided by EPA to assist states in siting monitors to characterize ambient air quality impacted by significant SO_2 sources, with the goal of identifying peak SO_2 concentrations attributable to those sources. For a CDD, EPA must determine whether the Area has attained the NAAQS based upon a showing that the three most recent years of ambient monitoring data show attainment, along with "additional information" as necessary to determine the area is in attainment. The State and Local Air Monitoring Stations (SLAMS) network (and any other industrial or special purpose monitors used for this purpose) must meet applicable criteria in 40 CFR part 58, appendices A, C, and E and report their data to the Air Quality Subsystem (AQS).

There are two SO_2 monitors in the Anne Arundel-Baltimore County Area. The Essex Monitor, a SLAMS monitor, has not had any 1-hour SO_2 design values exceeding the 1-hour SO_2 NAAQS over the last decade.[11] The Essex Monitor therefore does not show a violation of the NAAQS, with a design concentration higher than 75 ppb not recorded since the period 2007 through 2009. Since then, this monitor has a complete record showing no design values exceeding the NAAQS. Though the Essex Monitor does not show a violation of the NAAQS, it is not sited in the area of peak modeled values for the Area. Table 1 in this document shows the 99th percentile daily maximum 1-hour SO_2 concentrations from 2014 through 2021 at this monitor, along with the calculated design values for each 3-year period and the number of hourly SO_2 concentrations above 75 ppb.

Table 1: 2014-2021 Essex Monitor SO_2 Values for the Anne Arundel-Baltimore County Area

Year	99th Percentile Daily 1-hour Maximum Value (ppb)	Design Value (ppb)	Number of Hourly SO_2 values above 75 ppb (by year)	Valid Monitor Days (by year)

[10] "SO_2 NAAQS Designations Source-Oriented Monitoring Technical Assistance Document," EPA Office of Air and Radiation Office of Air Quality Planning and Standards Air Quality Assessment Division (February 2016, DRAFT).

[11] The Essex Monitor is a State and Local Air Monitoring Station (or SLAMS). The design concentration for the Essex Monitor for the three-year period (2018-2020) is 9 ppb and the 2019-2021 design concentration is 7 ppb, far under the 2010 SO_2 NAAQS.

2014	26.4	22	0	360
2015	17.7	22	0	357
2016	12.9	19	0	355
2017	8.5	13	0	323
2018	12.3	11	0	318
2019	10.5	10	0	351
2020	4.7	9	0	352
2021	5.4	7	0	354

The Essex Monitor design value has been below the 2010 1-hr SO_2 NAAQS since 2012, which was the first year of the 3-year model simulation period used to designate the area, and the Essex Monitor has also had no hourly SO_2 values exceeding the 75 ppb 2010 1-hour SO_2 NAAQS. Over the last three years of available data, 2019 through 2021, the 99th percentile hourly values at the Essex Monitor have fallen to the 5-12 ppb range, with design values of approximately 10 ppb. This shows significant improvement in air quality since 2012 within this portion of the Anne Arundel-Baltimore County Area.

The other monitor in the area is the special purpose Riviera Beach Monitor located in northern Anne Arundel County near the Fort Smallwood Complex. This monitor has a current design value well below the 2010 SO_2 NAAQS, but the monitor's design value data is incomplete.[12] Though only in operation since January 2018, the Riviera Beach Special Purpose Monitor has experienced significant periods of invalid or missing measurements during that time and was discontinued in mid-2022.[13] The Riviera Beach Monitor data is incomplete for 2018, 2019, and 2020, and therefore its data is invalid for the purpose of a CDD.[14] The Essex Monitor's 2019-2021 1-hr SO_2 design value is 7 ppb and Riviera Beach's 2018-2020 1-hr SO_2

[12] A special purpose monitor is defined in 40 CFR 58.20 and is limited to 24 months of operation. This monitor has exceeded the operations limits under the special purpose definition because it operated past January 18, 2020. The 2018-20 design concentration for the Riviera Beach Monitor is 24 ppb, well below the 75 ppb 2010 SO_2 NAAQS.
[13] *See* Maryland Department of the Environment Ambient Air Monitoring Network Plan for Calendar Year 2022 (https://mde.maryland.gov/programs/Air/AirQualityMonitoring/Pages/Network.aspx).
[14] From MDE's 2022 Ambient Air Monitoring Network Plan (page 15) concerning this monitor: "[I]n 2016, the EPA designated portions of Anne Arundel County and Baltimore County as non-attainment for the 2010 1-hour SO2 NAAQS. This designation was based on modeled, not monitored, SO_2 concentrations. In order to better evaluate actual ambient SO_2 concentrations, a source oriented SO_2 monitor was established at Riviera Beach Elementary School as a Special Purpose Monitor on January 12, 2018."

design value is 24 ppb, though the Riviera Beach design value is flagged as incomplete.[15] Because the Riviera Beach Monitor has now been discontinued, a more recent design value is not available.

The technical support document (TSD) prepared by EPA for this action contains an analysis of historical 1-hour monitored SO_2 concentrations at the Essex Monitor for the period 2009-2021 and the Riviera Beach Monitor for the period between 2018-2021. The Essex Monitor is shown to have marked reductions in peak 1-hour SO_2 concentrations over time. The Riviera Beach Monitor, which has data over a much smaller time period and significant gaps in data collection, nevertheless had a peak hourly monitored 1-hour value of 63.9 ppb in 2018, and no peak values over 50 ppb since that time.

One potential explanation for recent decreases in the monitored hourly SO_2 concentrations in the Anne Arundel–Baltimore County Area is that the operations of the coal-fired EGUs in the Area are very different now than at the time of EPA's nonattainment designation. Under a consent order between Raven Power and MDE, one of the area's primary SO_2 emission sources (Wagner Unit #2) was permanently required to cease burning coal and switched to natural gas as of July 1, 2020.[16] In addition, under that same consent order, the remaining coal-fired sources at Brandon Shores and Wagner have operated much less frequently than when EPA designated the Area as nonattainment in 2016. This may explain why there have been no recent exceedances of the 2010 1-hour SO_2 NAAQS at the Riviera Beach Monitor.

B. Overview of EPA Modeling Analysis for the Anne Arundel-Baltimore County Area

EPA's SO_2 Modeling TAD outlines modeling approaches for SO_2 NAAQS attainment status designations to assist state, local, and tribal air agencies in the characterization of ambient

[15] *See* 40 CFR part 50, Appendix T, section 3(b) for monitoring data completeness criteria for design value determination for the SO_2 NAAQS.

[16] *See* Consent Order between Raven Power Fort Smallwood LLC and the Maryland Department of the Environment regarding emissions at the Fort Smallwood electric generating complex, entered December 4, 2019, (Appendix B-1 of Maryland's January 31, 2020 SIP revision).

air quality in areas with significant SO_2 emission sources.[17] EPA's SO_2 Modeling TAD outlines recommended modeling approaches and provides recommendations on several aspects of dispersion modeling in this context, including the use of temporally varying actual emissions, source characterization, meteorological data, model selection, and background concentrations. Consistent with the approach set forth in the SO_2 Modeling TAD, EPA conducted a dispersion modeling analysis for the Anne Arundel-Baltimore County nonattainment area to show the impact on air quality of all large SO_2 emissions sources. For this Area, the primary sources of SO_2 emissions include three coal-fired EGUs located in the nonattainment area — Brandon Shores, C.P. Crane, and H.A. Wagner electric generating facilities. Brandon Shores and Wagner are located adjacent to one another in northern Anne Arundel County, residing within the Fort Smallwood Complex. The Crane facility is located approximately 22 kilometers northeast of Brandon Shores and Wagner in Baltimore County. The only other significant source of SO_2 emissions in the Area is the Wheelabrator-Baltimore facility, which is a waste-to-energy facility that combusts up to 2,250 tons per day of post-recycled waste to generate electricity and steam. Wheelabrator-Baltimore is located in the City of Baltimore, approximately 13 kilometers northwest of the Brandon Shores and Wagner facilities. EPA modeled Wheelabrator using its allowable permitted emission limit for SO_2 rather than actual emissions. The allowable permitted emission limit was much higher than actual emissions, based on annual reported emissions.

EPA's modeled actual emissions from these sources for the Area for the period between 2019-2021 (with the exception of Wheelabrator-Baltimore, for which we relied on allowable permitted emissions). Our review shows that recent actual, annual SO_2 emissions are much lower compared to the emissions for the time periods used for the initial nonattainment designation (i.e., 2012-2014 and 2013-2015 actual emissions). As a result of the closure of

[17] "SO_2 NAAQS Designations Modeling Technical Assistance Document," U.S. EPA Office of Air and Radiation Office of Air Quality Planning and Standards Air Quality Assessment Division (August 2016, DRAFT).

Crane's coal units by June 2018, there were no emissions from those units to include in this analysis. The conversion of Wagner Unit 2 from coal to natural gas in 2020, and the installation of a dry sorbent injection emission control for SO_2 on Wagner Unit 3 in 2018, also contributed to significant emission reductions in the Area over the last five years. Both coal units at Brandon Shores have flue gas desulfurization (FGD) SO_2 emissions controls. The remaining Fort Smallwood Complex coal units have also reduced their total annual operating hours, directly contributing to reductions in annual SO_2 emissions over the last five years, under enforceable consent orders between the source owners and the MDE, establishing reduced emission limits and allowable hours of operation. The decline in actual SO_2 emissions from these sources between the time of designation of the Area as nonattainment (based on the period 2012-2014) and the most recent 3-year period on which EPA is evaluating the Area for a clean data determination (2019-2021) can be found in Table 2 in this document. Emissions from the EGU sources presented in Table 2 in this document are as reported to EPA's CAMD (Clean Air Markets Division), while those for the non-EGU Wheelabrator were provided to EPA by MDE.

Table 2 – Annual Emissions from Major Stationary SO_2 Sources in the Anne Arundel-Baltimore Nonattainment Area for 2012-2021 (tons of SO_2 per year)

Year	Brandon Shores		H.A. Wagner				C.P. Crane		Wheelabrator-Baltimore
	Unit 1	Unit 2	Unit 1	Unit 2	Unit 3	Unit 4	Unit 1	Unit 2	
2012	1,547	1,301	0.2	2,513	4,964	41.1	1,214	962	194
2013	1,389	1,482	0.2	1,555	8,557	72.7	719	2,143	321
2014	1,670	1,475	72.6	1,940	7,277	323	574	1,316	310
2015	1,311	1,643	65.0	1,188	8,754	185	382	946	*
2016	1,450	1,270	26.5	163	7,575	74.8	412	638	259
2017	1,098	1,418	2.5	117	1,245	60.8	379	449	308
2018	1,747	1,785	6.1	230	2,733	197	392	475	346
2019	547	954	15.3	88.8	1,124	39.9	0	0	329
2020	420	267	0	0	605	13.5	0	0	*
2021	759	720	5.7	0	645	17.4	0	0	*

* Wheelabrator-Baltimore state-reported emissions for 2015 were not available. Annual emissions for Wheelabrator for 2020 and 2021 were not yet available at the time of EPA's clean data determination analysis.

Based on the source-specific annual SO_2 emissions in Table 2 in this document,

emissions from Brandon Shores have been reduced by about 70 percent between the designation and CDD modeling periods, while emissions from Wagner have been reduced by about 90 percent during that same period. Emissions from Crane have been entirely eliminated in the time between the designation and more recent CDD modeling periods, while actual emissions from Wheelabrator during that same period have remained relatively unchanged. For further information on actual hourly emission rate historic data, refer to Appendix B of EPA's TSD for hourly emissions values for the large EGUs in the Area.

EPA's modeling analysis modeled the emissions impacts from the Wagner, Brandon Shores, and Wheelabrator facilities described above in the Anne Arundel-Baltimore County Area. EPA used actual 2019-2021 hourly SO_2 emissions from EGUs in the Area, as measured by continuous emissions monitor (CEM) data and used permitted allowable emissions for the non-EGU source, Wheelabrator-Baltimore. EPA's analysis uses the American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD), with pre-processing input data from EPA's Regulatory Model Terrain Pre-processor (AERMAP) and EPA's AERMOD Meteorological Preprocessor (AERMET) models. AERMOD is a steady-state plume model that incorporates air dispersion based on planetary boundary layer (PBL) turbulence structure and scaling concepts, including treatment of both surface and elevated sources, and both simple and complex terrain. AERMAP is a stand-alone terrain pre-processor, which is used to both characterize terrain and generate receptor grids for use in AERMOD. AERMET is a stand-alone program which provides AERMOD with the information it needs to characterize the state of the surface and mixed layer, and the vertical structure of the PBL. EPA's modeling comports with EPA's SO_2 Modeling TAD, with additional guidance provided by EPA's AERMOD Implementation Guide along with appropriate sections of Appendix W and AERMOD, AERMAP, and AERMET user guides.

EPA developed its receptor grid modeling protocol on a modeling protocol developed by MDE for use in their attainment planning modeling. For purposes of a CDD, EPA refined

Maryland's original receptor grid. Maryland's original model receptor grid placed nested Cartesian grids centered on the Fort Smallwood Complex (Brandon Shores and Wagner) and Crane and spaced: every 25 meters along the ambient boundary; every 100 meters out to a distance of 15 km; and every 500 meters between 15 and 25 km. EPA's final model receptor grid included all of the Maryland SIP modeling protocol-based receptors within 10 km of the Crane and Fort Smallwood EGUs and within 5 km of the Wheelabrator-Baltimore facility. However, EPA limited the model receptor grid to areas nearby to the primary coal-fired EGUs based on modeling done in support of our original designation action for the Anne Arundel-Baltimore 2010 SO_2 NAAQS nonattainment area. That designation modeling showed peak model SO_2 concentrations were confined to within a few kilometers of the coal-fired EGUs at the Fort Smallwood complex. The final CDD model grid (after filtering and pre-processing for use in AERMAP) is composed of 56,883 model receptors. Supplemental model receptor grids were based on those of MDE's modeling protocol, covering the areas within the boundaries of the Crane and the Fort Smallwood facilities. EPA's selected modeling domain for the CDD analysis captures the maximum modeled concentration from the primary emission sources in the nonattainment area, per the Appendix W modeling guidance. For further information on the receptor grid utilized for EPA's modeling analysis, refer to the AERMAP/Model Receptor Development section of EPA's TSD prepared in support of this action.

Meteorological data utilized in the modeling analysis was developed using EPA's AERMET (version 22112) preprocessor. AERMET processes three types of data: 1) hourly surface observations that are typically, but not exclusively, collected at airports by the National Weather Service (NWS) and/or the Federal Aviation Administration (FAA); 2) twice-daily upper air soundings collected by the NWS; and 3) data collected from an on-site or site-specific measurement program or prognostic meteorological data. Surface meteorological measurements for the Area were taken from the Baltimore-Washington International Airport (BWI) Automated Surface Observing Systems (ASOS) Monitor. Upper air soundings were taken from the Sterling,

Virginia site near Dulles Airport in Virginia just west of Washington, DC. These are the closest available sites to the primary SO_2 sources in the Anne Arundel-Baltimore County Area. EPA's analysis indicates the meteorological collection sites and the modeled SO_2 emissions sources have similar elevations and topographical settings.

In accordance with EPA's SO_2 Modeling TAD, EPA's modeling analysis uses surface meteorological data from BWI and upper-air measurements from Dulles Airport for the 2019-2021 period. Local input information for the Area was used to analyze surface conditions using EPA's AERSURFACE tool for AERMET meteorological pre-processor model for input to AERMOD. AERSURFACE is a tool that processes land cover data to determine the surface characteristics for use in AERMET for processing for use in AERMOD.

AERMOD currently cannot simulate dispersion under calm or missing wind conditions. To reduce the number of calms and missing winds in the surface data, EPA used the AERMINUTE tool to more accurately translate 1-minute ASOS wind data to generate hourly average wind data for input to AERMET.

Section 8.3 of EPA's Guideline on Air Quality Models provides additional discussion on background monitoring concentrations for air quality analyses. Additional guidance points regarding the determination of background concentrations for the 1-hr SO_2 NAAQS are outlined in EPA's March 1, 2011, 1-hour NO_2 clarification memo.[18] It includes a procedure to use temporally varying background concentrations. Background concentrations are essential in constructing the design concentration, or total air quality concentration, as part of any NAAQS analysis. EPA utilized a seasonal by hour of day background concentration derived from 2019-2021 monitoring data collected at the Essex, MD SO_2 Monitor (Site # 24-005-3001), as described in EPA's March 1, 2011, 1-hour NO_2 clarification memo. The Essex Monitor is located in Baltimore County, within the Anne Arundel-Baltimore County Area, approximately

[18] *See* EPA's "Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour N02 National Ambient Air Quality Standard" memo from Tyler Fox to Regional Air Division Directors, dated March 1, 2011.

16 km north of the Fort Smallwood Complex and 10 km west of Crane. EPA believes the Essex Monitor, since it is actually in the Anne Arundel-Baltimore County Area, provides a representative background concentration for its CDD modeling analysis. Given the monitor's most recent 1-hr SO_2 design value (7 ppb), the impacts of these sources are probably small and would provide a conservative estimate of background concentrations for EPA's CDD modeling analysis. The Essex Monitor is likely also impacted by the major SO_2 emission sources in the Area.

EPA modeled hourly emissions over a 3-year period between 2019 through 2021. Choice of this time period excluded emissions from both coal-fired units at Crane, which ceased burning coal in June 2018. Selection of these years simplified the process of obtaining source emissions data and stack information since only Brandon Shores, Wagner and Wheelabrator-Baltimore operated over the timeframe of EPA's CDD analysis.

To capture the CDD model impacts, the physical stack parameters and hourly, actual SO_2 emission rates must be properly constructed. The CDD modeling analysis utilized stack (and building) information and is described in detail in the Building Downwash and Stack Good Engineering Practice (GEP) section of the TSD prepared by EPA in support of this action.

1. Results of EPA's Air Quality Modeling Analysis

EPA's CDD modeling utilized meteorological data, actual and allowable hourly SO_2 emissions, and corresponding hourly stack velocities and stack temperatures to simulate SO_2 concentrations over portions of the Anne Arundel-Baltimore County Area. This modeling analysis shows that the Area is not violating the 1-hour SO_2 NAAQS based on actual and allowable SO_2 emissions from sources within or near the area. No air quality monitor within the Area (which was designated in Round 2 of EPA's designations under the 2010 SO_2 NAAQS) is currently violating the 1-hr SO_2 NAAQS, although we recognize that the current SLAMS monitor in Essex, MD is not located at the point of peak modeled values used by EPA for area designation.

EPA's modeling analysis (based on 2019-2021 SO_2 emissions) showed a peak design value (i.e., the 3-year average of the 99th percentile daily maximum 1-hour concentrations, or the 99th percentile concentrations) of 53.1 ppb. Table 3 in this document summarizes the peak model receptor design value and the 99th percentile model concentrations that contributed to that receptor's modeled design concentration.

Table 3 - Summary of 2019-2021 Peak Modeled Receptor 1-Hour SO_2 Design Values and 99th Percentile Values for the Anne Arundel-Baltimore County, MD Area

Design Value (ppb)	Year 1			Year 2			Year 3		
	Date	Hour of Day	SO_2 99th Percentile (ppb)	Date	Hour of Day	SO_2 99th Percentile (ppb)	Date	Hour of Day	SO_2 99th Percentile (ppb)
53.1	10-02-2019	14	69.3	7-27-2020	12	52.3	1-20-2021	09	37.9

This modeled value is approximately 71 percent of the level of the 75 ppb 2010 SO_2 NAAQS. The peak model design value occurred about one km east of the Fort Smallwood Complex, near the southern shoreline of the Patapsco River east of the Fort Smallwood Complex. We note that the 99th percentile values declined over the 3-year modeled period. This trend is similar to the trends observed at the Riviera Beach Monitor, which is the closest SO_2 monitor to the location of the peak model receptor.

Our analysis shows the remaining coal-fired units within the Fort Smallwood Complex (i.e., Brandon Shores Units 1 and 2 and Wagner Unit 3) are the primary contributors to the peak model design value, combining to contributing over 94 percent of the peak receptor's modeled 1-hour SO_2 design concentration. However, FGD emission controls have been installed on the coal-fired units at Brandon Shores and dry sorbent injection was installed on Wagner Unit 3 in 2018. Wagner Unit 2 remains operational but since 2021 is fired with natural gas and is no longer a significant source of SO_2 emissions. Wagner Units 1 and 4 are now fired with natural gas or oil and are less significant SO_2 emitters compared to the remaining coal-fired units. Though the 2019 design value is higher than those in 2020 and 2021, the additional emissions controls on EGUs in the Area and tighter emissions limits and annual operating hours limitations

imposed by the consent decree likely contribute to lower design values in more recent years.

C. Conclusion of EPA's Modeling and Monitoring Analysis

EPA conducted a modeling analysis using three years of actual and allowable SO_2 source emissions coupled with representative meteorological data for use in modeling. Hourly SO_2 emissions from the sources that were included in Maryland's SIP were constructed along with corresponding stack velocities and temperatures. This primary emissions source information was processed for inclusion in EPA's AERMOD air-dispersion model to estimate 1-hour SO_2 design values within the Anne Arundel-Baltimore County, MD nonattainment area.

Final peak model concentrations from EPA's modeling analysis were 53.1 ppb, occuring over the Patapsco River east of the Fort Smallwood Complex. Large SO_2 emission sources, including coal fired units at Brandon Shores and Wagner, are the largest contributors to the peak modeled SO_2 design concentration in our modeling analysis. EPA also gauged impacts from other nearby sources to the primary sources. Modeled design concentrations in these nearby areas were much lower that the peak modeled design concentrations found in the main modeling domain.

Ambient air monitoring of the area does not show any violations of the NAAQS based on the most recently available data for the period between 2019-2021, though the area of modeled peak concentration is at a location other than the monitor locations. Recent trend data has shown both declining emissions and declining monitor 99^{th} percentile and peak 1-hour monitor values. Based on this available monitoring data and the accompanying modeling analysis, we have demonstrated that the Anne Arundel-Baltimore County Area is attaining the 2010 1-hour SO_2 NAAQS, based on actual meteorology and emissions during the 2019-2021 time period. As a result, we have shown that the Anne Arundel-Baltimore County Area for the 2010 SO_2 NAAQS meets EPA criteria for the area to qualify for a CDD.

D. EPA Review of Select Anne Arundel-Baltimore County Area Attainment Plan Elements from Maryland's January 31, 2020 SO_2 SIP Revision Request

In the event EPA issues a final CDD, certain nonattainment planning requirements under CAA section 172(c) are still required for the Area. Specifically, these elements include an emissions inventory (EI), required by CAA section 172(c)(3), and a nonattainment new source review (NNSR) program required by CAA section 172(c)(5). Maryland submitted these required attainment plan elements to EPA as part of its attainment plan SIP revision dated January 31, 2020.

1. Maryland's Base Year Emissions Inventory for the Anne Arundel-Baltimore County Area

EPA's 2014 SO_2 Nonattainment Guidance describes the statutory elements comprising an SO_2 attainment plan. These requirements include submission of a comprehensive, accurate and current base year emissions inventory of all sources of SO_2 within the nonattainment area, per CAA section 172(c)(3).[19] EPA's 2014 SO_2 Nonattainment Guidance requires that the base year emissions inventory should be consistent with the Air Emissions Reporting Requirements (AERR) at Subpart A to 40 CFR part 51.[20] This base year inventory can be represented by a year that contributed to the three-year design value used for the original nonattainment designation and should include all sources of SO_2 in the nonattainment area and any sources located outside the nonattainment area which may affect attainment in the area.

Maryland selected 2014 for the base year emission inventory for the Area, which is appropriate because the nonattainment designation of the Area was based on data from 2013-2015. Actual emissions from all the sources of SO_2 in the Anne Arundel-Baltimore County Area were reviewed and compiled for the base year emissions inventory requirement. Maryland's 2014 base year SO_2 emission inventory meets the requirements of CAA section 172(c)(3) and comports with EPA's 2014 SO_2 SIP Guidance.[21] Maryland's 2014 base year SO_2 emissions

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[19] *See* "Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions" (April 23, 2014).

[20] The AERR at Subpart A to 40 CFR part 51 cover overarching Federal reporting requirements for the states to submit emissions inventories for criteria pollutants to EPA's Emissions Inventory System. EPA uses these submittals, along with other data sources, to build the National Emissions Inventory.

[21] *See* pp. 46-47 of EPA's "Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions," dated April 23, 2014.

inventory for the Area, by emission source category, is contained in Table 4 in this document.

Table 4 - 2014 SO_2 Emission Base Year Inventory for the Anne Arundel-Baltimore County Area

Emissions Source Category	SO_2 Annual Emissions (tons per year)
Stationary Point (and Quasi-point) Sources	14,797.46
Area Sources	960.59
Onroad Mobile Sources	96.55
Nonroad Mobile Sources	238.71
Total	16,093.31

In the 2014 base year, point source emissions accounted for 91 percent of all SO_2 emissions in the Area. The primary SO_2 point sources were the Brandon Shores, Wagner, and Crane EGUs, and to a lesser extent the Wheelabrator Baltimore waste-to-energy incinerator. Table 5 in this document shows the 2014 SO_2 emissions of point source facilities in the Area that reported annual emissions of greater than six tons. As noted previously, emissions for all of these sources have declined dramatically since 2014, with additional limits enacted for Wagner and Brandon Shores through more recent 40 CFR part 70 permits, as well as more stringent emission limits and operational restrictions placed upon those facilities through consent orders between MDE and the facility owners, as described in more detail in sections B and C, in this document.[22] Further, the Crane facility ceased operation in 2018, Wagner's coal-fired Unit 2 ceased coal combustion in June 2020, and the remaining Wagner coal-fired unit (Unit 3) is to cease coal combustion by January 1, 2026.[23]

Table 5 - Point Source Contribution to the 2014 SO_2 Base Year Emissions Inventory for the Anne Arundel-Baltimore County Nonattainment Area

[22] MDE issued a title V permit for Raven Power's Brandon Shores and Wagner generating stations (which MDE considers a single source for title V and NSR purposes). The Title V permit is available at MDE's website, at: https://mde.maryland.gov/programs/permits/AirManagementPermits/Test/Raven%20Power%20Ft.%20Smallwood, %20LLC.pdf. EPA does not intend to add the Title V permit to the SIP but is referencing it here for purposes of showing declining emissions.

[23] *See* Consent Order between Raven Power Fort Smallwood LLC and the Maryland Department of the Environment relating to operations at the Herbert A. Wagner electric generating station, as it relates to regional haze formation, entered June 24, 2021. The consent order is available for review in the docket for this action.

Facility	2014 SO_2 Annual Emissions (tons per year)
Brandon Shores	3,145.09
Wagner	9,610.26
C.P. Crane	1,887.16
All Other Point Sources Combined	33.26
Total Point Source Emissions	14,675.76

EPA has evaluated Maryland's 2014 base year emissions inventory for the Anne Arundel-Baltimore County Area and has determined that it was developed in a manner consistent with CAA section 172(c)(3) and with applicable EPA guidance.

2. Maryland's New Source Review Program

Section 172(c)(5) of the CAA establishes an attainment plan element requirement that the state have in place a permitting program for the construction and operation of new or modified major stationary sources in a nonattainment area, in accordance with section 173 of the CAA.[24] Maryland has a fully implemented nonattainment new source review (NNSR) program under the Code of Maryland Regulations (COMAR), COMAR 26.11.17 "Nonattainment Provisions for Major New Sources and Major Modifications," addressing the criteria pollutants. EPA has approved this chapter into the Maryland SIP (77 FR 45949, August 2, 2012; as updated by 80 FR 39969, July 13, 2015).

Maryland's NNSR program meets the SO_2 applicable requirements of CAA section 173 as COMAR 26.11.17 applies to any new or modified major stationary source in an area that has

[24] The CAA NSR program is composed of three separate programs: Prevention of significant deterioration (PSD), NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies in undesignated areas and in areas that meet the NAAQS—designated "attainment areas"—as well as areas where there is insufficient information to determine if the area meets the NAAQS—designated "unclassifiable areas." The NNSR program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—designated "nonattainment areas." The Minor NSR program addresses construction or modification activities that do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as the NSR programs. Section 173 of the CAA lays out the NNSR program for preconstruction review of new major sources or major modifications to existing sources, as required by CAA section 172(c)(5). The programmatic elements for NNSR include, among other things, compliance with the lowest achievable emissions rate and the requirement to obtain emissions offsets.

been designated "nonattainment" under CAA section 107(d)(1)(A)(i).[25] The SIP-approved NNSR program covers the Anne Arundel-Baltimore County SO_2 Area and includes SO_2 as a "regulated NSR pollutant."[26]

Maryland's NNSR program rule, as codified at COMAR 26.11.17, defines "major stationary source" as "any stationary source of air pollution which emits or has the potential to emit 100 tons or more of any regulated NSR pollutant," which by definition includes SO_2.[27] A "significant" net increase in SO_2 emissions is defined as 40 tons per year. "Best Available Control Technology" is defined as an emissions limitation "based on the maximum degree of [emissions] reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification." All permits and approvals required by Maryland's NNSR permitting program, under COMAR 26.11, must be obtained before construction or modification of a subject emissions source.[28]

EPA has reviewed Maryland's NNSR program and determined that its SIP-approved NNSR program under COMAR 26.11 meets the requirements for NSR under CAA sections 172(c)(5) and 173 and 40 CFR 51.165 for SO_2 sources undergoing construction or major modification in the Anne Arundel-Baltimore County Area without need for modification of the SIP-approved NNSR program. Therefore, EPA concludes that the Maryland SIP meets the NNSR requirements of CAA section 172(c)(5) applicable to attainment plan requirements for the Area.

3. Maryland Limits on Stationary SO_2 Sources

Although EPA is not taking action upon Maryland's attainment demonstration submitted as part of the January 31, 2020 attainment plan, EPA has reviewed Maryland's submitted emission limits and emissions control requirements for large SO_2 sources in the Area. EPA

[25] *See* COMAR 26.11.17.02A(3).
[26] *See* COMAR 26.11.17.01B(24).
[27] *See* COMAR 26.11.17.01B(17).
[28] *See* COMAR 26.11.17.03A.

proposes to add to the Maryland SIP as a SIP strengthening measure a consent order between MDE and Raven Power Fort Smallwood LLC and a consent order between MDE and C.P. Crane LLC that require enforceable SO_2 limits and operational limitations at the Fort Smallwood Complex and at the Crane facility.[29]

These consent orders establish SO_2 emission limits for these facilities (beginning in January 2019 and additional limits beginning in 2021), as summarized herein. Effective October 2019, Crane Units 1 and 2 are limited to combined SO_2 emissions of 2,900 pounds per hour (lbs/hr SO_2). Beginning January 2021, Brandon Shores Units 1 and 2 and Wagner Unit 3 combined (whether operating individually or in tandem) are limited to 3,860 lb/hr SO_2, on a 30-day rolling average basis. Beginning January 2021, Brandon Shores Units 1 and 2 (operating either individually or in tandem) shall not exceed a cumulative total of 435 hours per calendar year when the applicable units are operating at a combined $S0_2$ emissions rate greater than 2,851 pounds per hour. Beginning January 2021, Brandon Shores Units 1 and 2 cannot exceed 9,980 lbs/hr SO_2, on a 3-hour rolling average basis. Beginning January 2021, Brandon Shores Units 1 and 2 combined are limited to three hours per calendar year with combined emissions greater than 5,150 lbs/hr SO_2 (on a 1-hour average basis) when Wagner Unit 3 is not operating; and are limited to 435 hours per calendar year of combined emissions greater than 2,851 lbs/hr SO_2 when Wagner Unit 3 is also operating.

Wagner Unit 3 alone cannot emit more than 3,289 lbs/hr SO_2 (on a 1-hour averaging basis); is limited to emitting 1,904 lbs/hr SO_2 (on a 30-day rolling average); and is limited to 336 hours per calendar year of emissions greater than 2,299 lbs/hr SO_2 (on a 1-hour averaging basis).

Beginning January 2021, Wagner Unit 1 alone shall not emit more than 480 lbs/hour SO_2 (on a 1-hour averaging basis); and is limited to operating 438 hours per calendar year burning fuel oil. Beginning January 2021, at all times when operating, Wagner Unit 3 shall not exceed

[29] *See* Appendix B of Maryland's January 30, 2020 attainment plan SIP revision request to EPA. Specifically, Appendix B1 - Consent Order – Brandon Shores and Wagner Generating Stations, dated December 4, 2019; and Appendix B-2: Consent Order – C.P. Crane Generating Station, dated October 9, 2019.

1,904 lbs/hr SO_2 (as measured on a 30-day rolling average); and Unit 3 shall not exceed a maximum rate of 3,289 lbs/hr SO_2 at all times when operating (on a 1-hour average basis). Beginning January 2021 , at all times when operating, Wagner Unit 3 shall not exceed a cumulative total operation of 336 hours per calendar year when the Unit's $S0_2$ emissions rate is greater than 2,299 lbs/hr SO2 (on a one-hour average basis). Beginning January 2021, Wagner Unit 4 alone cannot emit more than 1,350 lbs/hr SO_2 (on a 1-hour average basis); and is limited to operating 438 hours per calendar year using fuel oil -- though both Units 1 and 4 can operate additional hours each year using natural gas. By July 2020, Wagner Unit 2 was required to cease operation or to convert from burning coal to burning natural gas. Annual Emissions reported to EPA's Clean Air Markets Division (CAMD) database and to MDE for the Crane facility dropped to zero for 2019-2021.

By incorporating these consent decrees between MDE and Raven Power into the Maryland SIP, EPA is strengthening the SIP and making these additional permitted limits and operating conditions federally enforceable.

IV. Proposed Action

EPA is proposing to issue a CDD for the Anne Arundel-Baltimore County Area. Finalizing this CDD would suspend the requirements for Maryland to submit an attainment demonstration and certain other associated nonattainment planning requirements for so long as the Anne Arundel-Baltimore County nonattainment area continues to attain the 2010 SO_2 NAAQS and would suspend EPA's obligation to promulgate a FIP associated with the FFS issued on September 20, 2019. This proposed action is consistent with EPA's long-held interpretation of CAA requirements.

Finalizing this action would not constitute a redesignation of the Anne Arundel-Baltimore County nonattainment area to attainment of the 2010 SO_2 NAAQS under section 107(d)(3) of the CAA. The Anne Arundel-Baltimore County Area will remain designated nonattainment for the 2010 SO_2 NAAQS until such time as EPA determines that the area meets

the CAA requirements for redesignation to attainment and takes action to redesignate the area.

EPA is simultaneously proposing to approve select elements of the SO_2 attainment plan SIP revision for the Area submitted by Maryland to EPA on January 31, 2020. EPA is approving select elements of the attainment plan that would not be suspended under a final CDD – a base year emission inventory and a showing that the area is covered by an EPA-approved NNSR program. EPA has determined that Maryland's 2014 base year emissions inventory for the Anne Arundel-Baltimore County Area comports with relevant EPA emissions inventory guidance, and therefore pursuant to section 172(c)(3), EPA proposes to approve Maryland's 2014 base year emissions inventory for the Area. EPA has also determined that Maryland's NNSR program meets applicable requirements for NSR under CAA section 173 for SO_2 sources undergoing construction or major modification in the Area. EPA therefore proposes to approve Maryland's NNSR element of its attainment plan as meeting the requirements of CAA section 172(c)(5). If EPA's approval of these elements is finalized, EPA's obligation to promulgate a FIP as to those elements will be terminated.

Finally, EPA is approving as SIP strengthening measures certain SO_2 emission limit requirements on large SO_2 emission sources that were submitted as part of Maryland's attainment plan for the nonattainment area.

EPA proposes to incorporate by reference several consent orders between MDE and Raven Power with the January 30, 2020 attainment plan as SIP strengthening measures to provide federally enforceable limits on the major SO_2 emissions sources in the Anne Arundel-Baltimore County Area, which are contained in Appendix B of Maryland's January 30, 2020 SO2 attainment plan SIP revision to EPA.[30] . EPA proposes to approve this portion of the Maryland's January 2020 submitted plan as a SIP strengthening measure and these consent

[30] *See* Appendix B of the January 30, 2020 attainment plan SIP Revision. Specifically, Appendix B1 - Consent Order – Brandon Shores and Wagner Generating Stations, dated December 4, 2019; and Appendix B-2: Consent Order – C.P. Crane Generating Station, dated October 9, 2019.

orders are available for review in the docket for this action. However, EPA is not proposing to approve in this action the CAA section 172(c)(1) attainment modeling demonstration submitted as part of the January 30, 2020 plan revision, nor is EPA proposing to approve the state's submitted CAA section 172(c)(1) RACM/RACT, CAA section 172(c)(2) RFP, CAA section 172(c)(6) emission limits necessary to provide for attainment, or CAA section 172(c)(9) contingency measures elements. As noted, EPA's obligation to promulgate a FIP as to these elements would be suspended by a CDD, for as long as the CDD remains in place.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference (as described in Section IV of this preamble) two consent orders between MDE and Raven Power governing SO_2 emissions limitations and operating limitations at the Fort Smallwood Complex facilities and the Crane facility, as contained in Appendix B of Maryland's January 30, 2020 SO_2 attainment plan SIP revision to EPA. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **For Further Information Contact** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

This action proposes to make a CDD for the Anne Arundel-Baltimore County Area for the 2010 SO_2 NAAQS based on air quality data which would result in the suspension of the requirement to submit certain Federal requirements and does not impose any additional regulatory requirements on sources beyond those required by state law or existing Federal law. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

In this case, EPA is proposing approval of two elements of a larger SIP revision (the 2020 SO_2 attainment plan) and is also proposing approval of two SIP-strengthening consent orders between MDE and the owner of two major SO_2 emitting sources that tighten SO_2 emission limits and impose specific operating conditions and hours. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action pertaining to the approval of two elements of the SIP submission merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action as defined by Executive Order 12866;
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed CDD and accompanying approval of selected elements of Maryland's January 30, 2020 SO_2 attainment plan do not have tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Adam Ortiz,
Regional Administrator,
Region III.

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